

CITY OF SAN JOSÉ, CALIFORNIA Department of Planning, Building and Code Enforcement 801 North First Street, Room 400 San José, California 95110-1795  <b>STAFF REPORT</b>	Hearing Date/Agenda Number P.C. 07/09/2003      Item: 3.i.	
	File Number CP03-039	
	Application Type Conditional Use Permit	
	Council District 7	
	Planning Area Evergreen	
	Assessor's Parcel Number(s) 670-02-026	

PROJECT DESCRIPTION			Completed by: John W. Baty
Location: West side of King Road 400 feet southerly of Burdette Drive (2569 S. King Road)			
Gross Acreage: 3.18	Net Acreage: 3.18	Net Density: n/a	
Existing Zoning: CG-Commercial General	Existing Use: Existing shopping center		
Proposed Zoning: No change	Proposed Use: 24-hour operation of an existing restaurant		

GENERAL PLAN		Completed by: JWB
Land Use/Transportation Diagram Designation General Commercial	Project Conformance: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> See Analysis and Recommendations	

SURROUNDING LAND USES AND ZONING		Completed by: JWB
North: Shopping Center	CG-Commercial General	
East: Multi-Family Residential	RM (PD) Planned Development	
South: Shopping Center	CN-Commercial Neighborhood	
West: Shopping Center	CG-Commercial General	

ENVIRONMENTAL STATUS		Completed by: JWB
<input type="checkbox"/> Environmental Impact Report found complete <input type="checkbox"/> Negative Declaration <input type="checkbox"/> Negative Declaration adopted on	<input checked="" type="checkbox"/> Exempt <input type="checkbox"/> Environmental Review Incomplete	

FILE HISTORY		Completed by: JWB
Annexation Title: Hillview No. 50		Date: April 30, 1965

PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION		
<input checked="" type="checkbox"/> Approval <input type="checkbox"/> Approval with Conditions <input type="checkbox"/> Denial <input type="checkbox"/> Uphold Director's Decision	Date: _____	Approved by: _____ <input type="checkbox"/> Action <input checked="" type="checkbox"/> Recommendation

APPLICANT/DEVELOPER	OWNER	
San Te Properties Hong Tsu Tsao 2152 Garden Terrace, Mountain View, CA 94040	San Te Properties Hong Tsu Tsao 2152 Garden Terrace, Mountain View, CA 94040	

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**PUBLIC AGENCY COMMENTS RECEIVED**

Completed by: John W. Baty

Department of Police

Attached

Other Departments and Agencies

None received

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**GENERAL CORRESPONDENCE**

Attached City Council Policy- Evaluation of 24-hour Uses

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**ANALYSIS AND RECOMMENDATIONS**

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**BACKGROUND**

On October 10, 2001 the applicant, San Te Properties, obtained a Conditional Use Permit (File No. CP01-065) to allow 24-hour use of the Lee Noodle House restaurant on South King Road. Since November 30, 1984 the Zoning Ordinance has required that all commercial uses operating between the hours of 12:00 midnight and 6:00 a.m. be subject to a Conditional Use Permit.

The Conditional Use Permit (CUP) provided for a time extension of up to two (2) years beyond the initial one (1) year time limit with the approval of a Permit Adjustment from the Director of Planning. A Permit Adjustment was not secured prior to the expiration of the CUP on October 10, 2002 rendering the Conditional Use Permit no longer valid.

On May 28, 2003 the applicant applied for a new Conditional Use Permit to allow 24-hour operation of the existing Lee Noodle House restaurant. No other changes are being proposed with this permit. Staff does not support the 24-hour operation for reasons stated in the Analysis section.

The subject restaurant is one tenant among several in an existing neighborhood retail complex that includes a variety of commercial uses, all of which share a central parking lot. The restaurant tenant space is located at the front of the complex and with its side facing directly onto South King Road. The restaurant does not serve alcoholic beverages and has no outdoor seating. Currently, the hours of operation are limited to between 6:00 a.m. and 12:00 midnight, by right in the CG-Commercial General Zoning district.

Surrounding land uses include commercial to the north, south and west and multi-family residential to the east across South King Road.

**ENVIRONMENTAL REVIEW**

The Director of Planning has determined that this project is exempt from environmental review under the provisions of the California Environmental Quality Act pursuant to Section 15301. Under this section projects that involve negligible or no expansion to existing facilities qualify for this exemption. In this instance, this project qualifies under this exemption in that no physical expansion of the existing facility is proposed.

## GENERAL PLAN CONFORMANCE

The proposed 24-hour operation of a restaurant use is consistent with the San José 2020 General Plan Land Use/Transportation Diagram designation of General Commercial.

## ANALYSIS

Since the previous Conditional Use Permit has expired, this proposal is being evaluated as a new proposal. The key issues analyzed for the proposed project include: 1) consistency with the City's Policy for Evaluation of 24-hour uses, and 2) site location considerations.

### Consistency with the Policy for Evaluation of 24-hour Uses

The attached Policy for Evaluation of 24-hour Uses is intended to provide guidelines for the appropriate development of commercial businesses that operate between the hours of 12:00 midnight and 6:00 a.m.

The policy states that, "crime statistics and police safety issues which are directly related to uses operating between 12:00 midnight and 6:00 a.m. will be analyzed and considered in determining the appropriateness of 24-hour uses". The Chief of Police, in a memo dated June 26, 2003, has indicated that the subject restaurant is in an area that has the highest crime statistics of all police beats in the City. A crime analysis of the address of the subject restaurant was conducted for an eighteen (18) month period (December 2001 – May 2003) listing a total of eighteen (18) calls for service, or an average of one per month. Because the restaurant is located in a police beat that is significantly impacted, the Police Department no longer supports the use of the restaurant past 2:00 a.m.

The subject restaurant is a "sit down" type restaurant, which the policy states does not generally exhibit the problems normally associated with "take-out" restaurants because patrons do not remain in their vehicles in the parking lot and food is consumed within the building with appropriate supervision. Litter is not typically a problem, as food is not served in disposable wrappings or containers. Therefore, impacts from littering, loitering, and noise are substantially reduced by the nature of the proposed use.

Generally, the policy recommends a 300-foot separation between late night uses and residential properties. However, this requirement may be reduced or increased upon review of the specific circumstances of the project. The proposed project provides physical separation of about 100 feet from the nearest residential use. King Road, a major thoroughfare containing four moving lanes, separates the restaurant from the adjacent neighborhood. Non-project related traffic noise from King Road is likely to be louder than the restaurant operation, including during evening hours.

Sit-down restaurants, unlike nightclubs and fast-food drive-through restaurant uses, tend to be less problematic when in close proximity to residential uses. Because of these factors, Staff feels the lack of a 300-foot separation is not as critical as would be the case if a quieter, less intensive use, such as a private parking lot, office or school, were situated between a late night commercial establishment and residential use. Therefore, it is unlikely that any noise from the proposed use will be audible or distinguishable from traffic noise at the closest residential property line.

### Site Location Considerations

The restaurant tenant space is located near the main project entry to the overall retail complex and is directly adjacent to the street. The site landscaping and restaurant building are well maintained, which gives the site a visually positive appearance. Since the building is located next to a heavily traveled King

Road, it is well suited for 24-hour operation and provides good opportunities for direct surveillance from the street. The existing parking meets the City's parking requirements for the restaurant use. The City's parking requirements are based on the number of dining seats or dining area. Since there will be no increase in the dining space or seating, no additional parking will be required. The restaurant shares parking with the other commercial uses in the retail complex. The required parking spaces are located directly in front of the restaurant. Parking should be adequate for the restaurant.

## **Conclusion**

The proposed use has been evaluated based on present conditions and recent crime statistics that were not available when the previously approved Conditional Use Permit (File No. CP01-065) was being reviewed.

The restaurant is located in a police beat that is unduly concentrated with crime. Staff concurs with the Police Department's recommendation that the existing restaurant should not be allowed to operate on a 24-hour basis. However, based on the number and nature of police calls for service, and that the proposed use is consistent with City Council Policy 6-27 – Evaluation of 24-Hour Uses, staff and the Police Department recommend that the existing restaurant be allowed to operate until 2:00 a.m.

Based on a condition of the previously issued Conditional Use Permit and direction from the Police Department, the restaurant should hire one or two off-duty police officers between the hours of 12:00 midnight and 2:00 a.m. Staff has included this recommendation as a project condition.

## **RECOMMENDATION**

The Planning staff recommends that the Planning Commission approve the requested Conditional Use Permit and include the following findings and conditions in its Resolution.

The Planning Commission finds that the following are the relevant facts regarding this proposed project:

1. This site has a designation of General Commercial on the adopted San José 2020 General Plan Land Use/Transportation Diagram.
2. The project site is located in the CG-Commercial General Zoning District.
3. Under the provisions of Section 15301 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project is exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended. The project will not have a significant adverse effect on the environment.
4. The subject site is generally surrounded by commercial shopping center uses to the north, south, west, and multi-family attached residential uses to the east.
5. The project consists of a 'sit-down' restaurant containing 99 dining seats.
6. The existing restaurant had previously obtained a Conditional Use Permit for 24-hour operation (File No. CP01-065), but this permit has since expired.
7. Based on the expired Conditional Use Permit as described above, the current restaurant hours are from 6:00 a.m. to 12:00 midnight. The restaurant is proposing to extend its operating hours past midnight.

8. The restaurant has an approximate floor area of 2,680 square feet.
9. The restaurant shares parking with the retail complex.
10. The restaurant tenant space is located directly adjacent to King Road, a four lane arterial street.
11. The proposed use is located about 100 feet from the closest residential property line.
12. The project is separated from adjacent residential uses by a four lane arterial street.
13. The existing restaurant building and site landscaping are well maintained.
14. The existing restaurant does not serve alcoholic beverages.
15. The existing restaurant does not provide amplified music for entertainment purposes.
16. The Police Department has identified some disturbance related issues with the existing restaurant (18 calls for service in the past 18 months).
17. The Police Department has identified this area as having the highest crime statistics of all police beats in the City.
18. The project includes conditions related to the hiring of off-duty Police Officers between the hours of 12:00 Midnight and 2:00 a.m.

This Planning Commission concludes and finds, based upon an analysis of the above facts that:

1. The proposed project will be consistent with the adopted San José 2020 General Plan Land Use/Transportation Diagram of the City of San José.
2. The proposed project complies with all applicable provisions of the Zoning Ordinance.
3. The proposed project is in compliance with the California Environmental Quality Act.
4. The proposed project is consistent with the intent of the Council Policy 6-27 for Evaluation of 24-hour Uses.

Finally, based upon the above-stated findings and subject to the conditions set forth below, the Planning Commission finds that:

1. The proposed use at the location requested will not
  - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
  - b. Impair the utility or value of property of other persons located in the vicinity of the site; or
  - c. Be detrimental to public health, safety or general welfare; and
2. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding areas; and
3. The proposed site is adequately served:
  - a. By highways or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate; and
  - b. By other public or private service facilities as are required.

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby granted. This Planning Commission expressly declares that it would not have granted this permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

### CONDITIONS PRECEDENT

This Conditional Use Permit shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until all things required by the below-enumerated precedent conditions shall have been performed or caused to be performed and this Resolution has been recorded with the County Recorder.

1. **Acceptance and Payment of Recording Fees.** The "Acceptance of Permit and Conditions" form shall be signed, notarized, and returned to the Department of City Planning within 60 days from the date of issuance of the resolution granting the permit. *Failure to do so will result in this permit automatically expiring regardless of any other expiration date contained in this permit.* Fees for recording a Certificate of Permit with the Recorder for the County of Santa Clara must be submitted along with the Acceptance Form.

### CONCURRENT CONDITIONS

The subject property shall be maintained and utilized in compliance with the below-enumerated conditions throughout the life of the permit:

1. **Conformance with Plans.** The proposed 24 hours use shall apply only to Lee Noodle House Restaurant as shown on the approved plans entitled, "CP03-039, Lee Noodle House, 2569 South King Road", dated July 2, 2003, on file with the Department of Planning, Building, and Code Enforcement and to the San José Building Code (San José Municipal Code, Title 24).
2. **Nuisance.** This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
3. **Landscaping.** Planting and irrigation are to be maintained in accordance with the approved permit (File No. H94-05-024) with Plan Set. Landscaped areas shall be maintained and watered and all dead plant material is to be removed and replaced by the property owner. Irrigation is to be maintained in accordance with Part 4 of Chapter 15.10 of Title 15 of the San José Municipal Code, Water Efficient Landscape Standards for New and Rehabilitated Landscaping and the City of San José Landscape and Irrigation Guidelines.
4. **Lighting.** Any new on-site lighting shall use Low-Pressure Sodium fixtures and be designed, controlled and maintained so that no light source is visible from outside of the property. Light levels at 1.5 or greater foot-candles average illumination at ground surface are discouraged. Lighting in the parking lot directly in front of the restaurant may be other than low-pressure sodium. Electroliers shall not exceed 17 feet above grade.

5. **Refuse.** All trash areas shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering into the garbage container. No outdoor storage is allowed/permitted unless designated on the approved plan set. Trash areas shall be maintained in a manner to discourage illegal dumping.
6. **Restroom Facilities.** Restroom facilities shall remain open during late night business hours.
7. **Security Personnel.** The applicant shall maintain a liaison with the Police Department to effectively control crime, gang, drug, and other police problems. The applicant shall hire off-duty Police Officer(s) between the hours 12:00 midnight and 2:00 a.m. daily to the satisfaction of the Police Chief. Said requirement shall remain in effect until such time it is determined to be no longer necessary by the Police Chief.
8. **Security Improvements.** The applicant shall provide appropriate security measures if not already provided on site, including but not limited to, alarm system, well-lighted address numbers and signs, no trespassing/loitering signs to the satisfaction of the Police Chief.
9. **Exterior Clean Up.** Exterior clean up and maintenance activities including garbage pick up shall not occur later than 10.00 p.m. or prior to 7:00 a.m.
10. **Utilities.** All on-site telephone, electrical and other overhead service facilities shall be placed underground to the satisfaction of the Director of Planning.
11. **Previous Conditions.** All of the conditions of the previously approved Site Development Permit (File No. H94-05-024) shall remain unchanged and in full force and effect unless such conditions are specifically modified or deleted by this Conditional Use Permit.
12. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings and wall surfaces within 24 hours of defacement.
13. **Hours of Operation.** The restaurant use is allowed to operate between the hours of 6:00 a.m. and 2:00 a.m., seven days a week, for service within the interior of the restaurant building. No outdoor waiting or seating areas are approved with this project.
14. **Number of Seats.** The restaurant use shall be limited to a maximum number of seats as approved under the previous Site Development Permit (File no. H94-05-024) for dining in the restaurant. Any additional seating shall be subject to review and issuance of permits by the Department of Planning, Building, and Code Enforcement.
15. **Amplified Sound.** Amplified sound shall be prohibited for music and entertainment including, but not limited to, singing, dancing, music, and monologues between the hours of 10:00 p.m. and 2:00 a.m. No outdoor loudspeakers are permitted.
16. **Alcoholic Beverages.** Alcoholic beverages may be sold by right under code, offered for sale or served to patrons for consumption on the premises as an incidental use only to a public eating establishment in conformance with all other applicable legal requirements and with appropriate

permits. Drinking establishments including taverns, bars, cocktail lounges, nightclubs, and similar uses are not allowed with this permit and shall require a subsequent Conditional Use Permit. In the event alcoholic beverage service is proposed, the applicant shall obtain all necessary permits from the State Alcoholic Beverage Control Agency. Said permits shall be maintained in good standing.

### CONDITIONS SUBSEQUENT

1. **Permit Expiration.** This Conditional Use Permit shall automatically expire two (2) years from and after the date of adoption of the Resolution by the Planning Commission or by the City Council on appeal, granting this Permit. The date of adoption is the date the Resolution granting this Conditional Use Permit is approved by the Planning Commission.
  2. **Time Limit.** This Conditional Use Permit expires and has no further force or effect two (2) years from the date of approval of this permit unless, the Director of Planning approves a Permit Adjustment to extend the validity of this Permit for a period of up to two years upon finding that the use has not resulted in significant police issues related to nuisances or disturbances. The Permit Adjustment must be approved prior to the expiration of this Permit.
  3. **Compliance Review.** A Compliance Hearing may be required at the discretion of the Planning Commission at any time during the length of this permit.
  4. **Revocation, Suspension, Modification.** This Conditional Use Permit may be revoked, suspended or modified by the Planning Commission, or by the City Council on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 3, Chapter 20.44, Title 20 of the San José Municipal Code it finds:
    - a. A violation of any conditions of the Conditional Use Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
    - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
    - c. The use as presently conducted creates a nuisance.
- c: Jenny Truong, Lee Noodle House, 2569 S . King Road, San José CA 95122  
Building Division (2),  
Engineering Services